

Record No. 120919

In the Supreme Court of Virginia

**The Falls Church (also known as The Church at the Falls –
The Falls Church),**

Defendant-Appellant,

v.

**The Protestant Episcopal Church in the United States of America
and**

The Protestant Episcopal Church in the Diocese of Virginia,

Plaintiffs-Appellees.

**BRIEF IN OPPOSITION
AND ASSIGNMENT OF CROSS-ERROR**

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INTRODUCTION

The decision below is a straightforward application of this Court's decision in *Green v. Lewis*, 221 Va. 547, 272 S.E.2d 181 (1980), to the undisputed facts of the case. The Circuit Court's January 12, 2012, Letter Opinion ("Opinion") followed a 22 day trial with 68 witnesses, a 4786 page trial transcript, 7926 exhibits (which total more than 130,000 pages), and approximately 1000 pages of post-trial briefs. That Opinion demonstrates that Virginia law is well settled and well understood, and therefore there is nothing for this Court to "clarify," as stated in The Falls Church's ("TFC's") Petition for Appeal ("Petition") at 10. An unbroken line of decisions further confirms that the Circuit Courts understand the law quite well. See *Abingdon Presbytery v. Indian Valley Presbyterian Church*, Case No. CL11-141 (Floyd Co. April 30, 2012), attached as Exhibit 1; *Diocese of Southwestern Va. v. Wyckoff* (Amherst Co. Nov. 16, 1979) (PX-CTREC-021), *pet. dismissed*, Rec. No. 800353 (Va. April 16, 1980); *Diocese of Southwestern Va. of the Protestant Episcopal Church v. Buhrman*, 5 Va. Cir. 497, 503 (Clifton Forge 1977), *pet. refused*, Rec. No. 780347 (Va. June 15, 1978); and *Trustees of Cave Rock Brethren Church v. Church of the Brethren*, 77 Va. Cir. 457 (Botetourt Co. 1976).

The issues presented by the Petition for Appeal are (1) whether the

Circuit Court correctly applied *Green v. Lewis*, and if so whether that decision contravenes the federal and Virginia Constitutions; and (2) whether a local church can belong to a hierarchical church for nearly two centuries; accept, conform to, and be bound by its rules; and then unilaterally renounce those rules and thereby absolve itself of its longstanding commitments as a subordinate part of the general church, with the obligations as well as benefits and privileges that such membership entails.

The Diocese joins in the arguments presented in the Episcopal Church's ("the Church's" or "TEC's") Brief in Opposition and Assignment of Cross-Error.

FACTS

The pertinent facts are described in the Circuit Court's Letter Opinion at 15-18, 60-63, and 83-94, and are summarized in part *infra*, in the discussion of the four factor neutral principles test set out in *Green*.

The standard of review applicable to each of TFC's assignments of error is *de novo*, for legal error.

ASSIGNMENT OF CROSS-ERROR

The Circuit Court erred by holding that Va. Code § 57-7.1 does not validate trusts for the benefit of a hierarchical church and by rejecting a

constitutional challenge to that interpretation. Preserved in, e.g., the Diocese's Post-Trial Opening Brief (filed Aug. 5, 2011) at 38-42.

ARGUMENT

I. **The Circuit Court correctly followed and applied this Court's decision in *Green v. Lewis*. (Assignments of Error 1, 2)**

In *Green* this Court defined the “neutral principles of law” doctrine, adopted in *Norfolk Presbytery v. Bollinger*, 214 Va. 500, 201 S.E.2d 752 (1974) (“*Norfolk*”), as follows: “In determining whether [a general] Church has a proprietary interest in [local church] property, we look [1] to our own statutes, [2] to the language of the deed conveying the property, [3] to the constitution of the general church, and [4] to the dealings between the parties.” 221 Va. at 555, 272 S.E.2d at 185-86. The Circuit Court faithfully followed those instructions, as this Court mandated in its previous decision in this case, *Protestant Episcopal Church v. Truro Church*, 280 Va. 6, 29, 694 S.E.2d 555, 567-68 (2010) (“*Truro Church*”). See Opinion at 47-104.

The “constitution” of the general church: Arguments that the Circuit Court erred by considering church canon laws, which pervade the Petition for Appeal, ignore *Green*.¹ Those arguments also disregard this Court's previous holding, in this case, that “the CANA Congregations

¹ TFC argued below that the “constitution” of a general church does not include its canons, but it has abandoned and thus waived that argument on appeal.

established that they were previously ‘attached’ to TEC and the Diocese”
“because they were required to conform to the constitution and canons of
TEC and the Diocese.” *Truro Church*, 280 Va. at 27, 694 S.E.2d at 566
(emphasis added).

That is the law of the case,² and it has long been the law of Virginia.
See, e.g., *Reid v. Gholson*, 229 Va. 179, 188-89, 327 S.E.2d 107, 113
(1985) (“One who becomes a member of [a hierarchical] church, by
subscribing to its discipline and beliefs, accepts its internal rules and the
decisions of its tribunals”); *Brooke v. Shacklett*, 54 Va. (13 Gratt.) 301, 320
(1856) (“To constitute a member of any church, two points at least are
essential ..., a profession of its faith and a submission to its government”)
(citation omitted).

Church canons are no different in this respect from internal rules of
secular voluntary associations. See, e.g., *Gottlieb v. Economy Stores, Inc.*,
199 Va. 848, 856, 102 S.E.2d 345, 351 (1958) (constitution and by-laws of
a voluntary association “constitutes a contract between the members,
which, if not immoral or contrary to public policy, or the law, will be enforced
by the courts”); *Phillips v. Widow's Son Lodge No. 54*, 152 Va. 526, 531-32,

² The Circuit Court did not address the law of the case, because it found, based on the evidence, “that the Congregations were, indeed, ‘bound’ by the national and diocesan constitutions and canons, and were, indeed, required to ‘conform’ to them.” Opinion at 37 n.19, quoting *Truro Church*.

147 S.E. 193, 194 (1929) (local lodge was bound by “the Constitution of the Grand Lodge, which provides that when a lodge ceases to function, all of its property vests in the Grand Lodge, in trust ...”).

TFC argues that it is not bound contractually by canons enacted after it became a separate church in the Diocese in 1836. Petition at 7, 26. But in 1836 the Constitution of the Diocese provided that every “parish” (local church) would “be benefited and bound ... by every rule and canon which shall be framed, by any Convention acting under this constitution, for the government of this church in ecclesiastical concerns.” PX-COM-071 at 405; PX-COM-072 at 20. See *also* Opinion at 84, quoting Diocesan Constitution (“[e]very Congregation within the Diocese..., however called, shall be bound by the Constitution and the Canons adopted in pursuance hereof”).

TFC’s attacks on TEC’s and the Diocese’s “trust” canons (Petition at 9, 11 & n.1, 17-19 & n.6, 21, 27, 31) are irrelevant. The Circuit Court held (we believe incorrectly – see Assignment of Cross-Error) that denominational trusts are not recognized in Virginia, and it therefore accorded “limited significance” to those canons. Opinion at 83 n.68.³

³ Apostles Ex. 290.0007, cited in Petition at 23, is not “the official version of the canons,” *id.* It is a scholarly annotation, whose substance has been rejected in relevant respects by a nearly unbroken line of judicial decisions

(footnote continued)

The decision below was not “based principally” on church canon law, as stated in the Petition at 1; see *also id.* at 3-4, 6, 9, 10, 27. Nor did the court hold that “TFC’s course of dealing created a contract,” *id.* at 22. The decision was based on all four factors identified in *Green*. See Opinion at 47-104. And the Circuit Court found, based on those factors, that “it is *overwhelmingly evident* – that TEC and the Diocese have contractual and proprietary interests in the real and personal property of each of these seven churches. Simply put, the facts here are at least as compelling as the facts in *Norfolk Presbytery* and *Green* and therefore require this Court to reach a similar judgment.” *Id.* at 104 (emphasis added).

The dealings between the parties: The Opinion below includes extensive findings of fact regarding the dealings between the parties. See Opinion at 61-62, 92-94. See *also id.* at 102, citing “almost 140 pages of detailed, documented indications of active [Diocesan] involvement and participation in the life of these churches, and the understanding and acceptance of those churches that they were part of a hierarchical denomination and subject to its laws,” in the Diocese’s Post-Trial Opening Brief at 56-194 (pages 56-79 apply specifically to TFC), and concluding that “the Court finds far more persuasive TEC’s and the Diocese’s presentation

throughout the country (see TEC’s Brief in Opposition at 2-5 n.1). The official version of the canons is PX-COM-001.

on the course of dealings between the parties.”

TFC claims that “[t]he most that plaintiffs could cite was page 85 of a vestry handbook stating that TFC was subject to plaintiffs’ constitution and canons.” Petition at 19. That is inaccurate. TFC’s 1982 and 1999 Vestry Manuals not only state that “The Falls Church is subject to the constitution and canons of the national church ... and of the Diocese,” they also include numerous additional quotations and citations to both national and Diocesan Constitutions and Canons. See PX-FALLS-226 at 5, 7-13, 21-23, 25-31; PX-FALLS-078 at 31-81, 85-93; Tr. 3002-08.

And that is not all, by any means. “[A] wealth of evidence ... demonstrates the congregations’ ‘agreements, pledges, or representations,’ as manifested by vestry oaths, vestry minutes, vestry handbooks, local church constitutions, innumerable acknowledgements of fidelity to TEC’s and the Diocese’s Constitutions and Canons, and other documents.” Opinion at 40 n.23 (citation omitted). The Circuit Court found, *inter alia*, that TFC consistently manifested its acceptance and adherence to the constitution and canons of the Diocese and the national Church, over a period of many years. Among other things, TFC complied with canon law by requesting Diocesan consent to encumber real property or incur debt; by being served by a Rector who was an Episcopal priest and who made at his ordination a

Declaration of Conformity to the Doctrine, Discipline, and Worship of the Episcopal Church; by using the Church's *Book of Common Prayer*, by its vestry members' oaths to uphold the doctrine, worship, and discipline of the Church; by organizing themselves as required by Canon, electing vestries and selecting wardens; by electing and sending lay delegates and clergy to the Diocese's Annual Council; by contributing financially to the support of the Diocese;⁴ by contributing to the Church Pension Fund on behalf of its clergy; and by obtaining health insurance through the Diocese. Opinion at 93. The court also found that "[e]ach of these churches were known in the community as *Episcopal* churches, using the names and symbols of denominational affiliation, including street signs to point the public in the direction of an *Episcopal* church." *Id.* at 92. TFC ignores those findings and the evidence that supports them.⁵

TFC argues that its Vestry members' solemn avowals of a "hearty

⁴ TFC stresses that its financial contributions to the Diocese were "voluntary." Until 1957, however, those contributions were mandatory. See PX-COM-196 at 36; Tr. 560-61, 699-701.

⁵ "A proprietary interest or a contractual obligation does not necessarily depend upon a monetary investment." *Green*, 221 Va. at 556, 272 S.E.2d at 186. Financial relations, discussed in the Petition at 8, 16-17, therefore appear irrelevant. (The Petition fails to note, however, that the Diocese provided extensive financial aid to maintain TFC's buildings and support its clergy throughout the 19th and well into the 20th Centuries. The record citations, to TFC Vestry minutes and Journals of Annual Councils of the Diocese, are far too voluminous for inclusion here.)

assent and approbation to the doctrines, worship and discipline of The Episcopal Church”⁶ should be disregarded because the oaths “began with a commitment to biblical authority.” Petition at 20. It is mistaken. *Jones v. Wolf*, 443 U.S. 595 (1979), the authority cited in the Petition, does not hold that civil courts must disregard any document that contains religious terminology. The Court instead observed that “[t]he neutral-principles method, at least as it has evolved in Georgia, *requires* a civil court to examine certain religious documents” and held that civil courts must scrutinize such documents “in purely secular terms” and may not “*rely on* religious precepts.” *Id.* at 604 (emphases added).

The court also found that Diocesan Bishops vetoed the employment of clergy at TFC on at least two occasions, and the church complied; that a Diocesan Bishop (or other Bishops acting on his behalf or at his invitation) made numerous visits to TFC over the years, including every year from 1934 to 2005; and that the Diocesan Bishop twice wrote to TFC’s Vestry regarding TFC’s plans for a new church building, in January 1988 and July 1990, and reminded the Vestry of the Church’s rule that local church property is held in trust for the diocese. Opinion at 94.

⁶ No fewer than twelve witnesses, including three CANA clergy, testified that the “discipline” of the Church is found in its Constitution and Canons and *Book of Common Prayer*. Tr. 397-98, 749-51, 2330-31, 2795, 3785, 4266-67, 4505-06, 4562-63, 4630-31, 4647, 4660, 4669-70.

In sum, the dealings between the parties in this case fit squarely within, and indeed went well beyond, the scope of the dealings that the Court described in *Green*, 221 Va. at 550, 553-54, 555, 272 S.E.2d at 182, 184-85, 186.⁷

Statutes: The Circuit Court observed that “[i]n the case of a super-congregational church,” Va. Code § 57-15⁸ “requires a showing that the property conveyance is the wish of the constituted authorities of the general church.” Opinion at 55, quoting *Norfolk*, 214 Va. at 503, 201 S.E.2d at 755 (emphasis in Opinion omitted).⁹

The court also relied on Va. Code § 57-16.1. Section 57-16.1 allows

⁷ The Circuit Court also “emphasized, however, that even if the Court did not consider the ‘course of dealing’ evidence in the instant case, it would not change the Court’s ultimate conclusion.” Opinion at 56 n.39.

⁸ Section 57-15 provides, in part: “Upon evidence being produced before the court that *it is the wish of the congregation, or church or religious denomination or society, or branch or division thereof, or the constituted authorities thereof having jurisdiction in the premises, or of the governing body of any church diocese*, to sell, exchange, encumber, extend encumbrances, make a gift of, or improve the property or settle boundaries by agreement, the court shall make such order as may be proper” (Emphasis added in Opinion at 54.)

⁹ The Circuit Court observed that TFC had the same understanding of § 57-15 earlier in the case. In a brief filed on August 31, 2007, the CANA Congregations argued that “Section 57-15’s requirement of denominational approval ... applies in cases such as *Norfolk Presbytery* and *Green*, where one or more congregations break away from a supercongregational church ... without joining any branch.’ ... In other words, in a case involving a supercongregational church (as here), where § 57-9 has been determined to be inapplicable (as here), the requirement of denominational approval applies.” Opinion at 56 n.40 (citation omitted).

church corporations to acquire and hold, improve, mortgage, sell, or convey real or personal property “in accordance with [the] law, rules, and ecclesiastic polity” of the “church or religious body” and in accordance with the law of the Commonwealth. *Id.* As stated in the Opinion below, “the phrase ‘church or religious body’ includes a denomination or diocese.” Opinion at 59. In addition, when a local church “is part of a hierarchical denomination, the ‘laws, rules, or ecclesiastic polity of the church or body’ necessarily include and incorporate the rules, laws, and polity of the denomination of which they are a constituent member.” *Id.* Thus,

when a local church that incorporates is a constituent member of a supercongregational church, § 57-16.1 in effect provides that it cannot acquire, encumber, or dispose of its real or personal property except in accordance with the laws, rules, and polity of the denomination and diocese to which the local church belongs.

*Id.*¹⁰

Deeds: The Opinion below describes the TFC deeds and their historical context at 61-63 and 81-83. The Circuit Court found as a fact, after reviewing the historical context of each of the eleven deeds, that

“under these circumstances, any reasonable grantor would have understood that property conveyed to a local Episcopal church at that time could not be removed from the denomination without the larger church’s consent, and that the

¹⁰ “When used in reference to religious entities, the term ‘polity’ refers to the internal structural governance of the denomination.” *Truro Church*, 280 Va. at 12 n.1, 694 S.E.2d at 558 n.1, *quoted in* Opinion at 59 n.44.

local church to which he or she was conveying property was bound to use, maintain, and control the property in accordance with the Church's and the Diocese's rules and ensure that property it acquired be used for the mission of The Episcopal Church and for no other denomination."

Opinion at 83 (citation omitted).¹¹

Seven of the eleven deeds to property at issue refer to the grantee as "Episcopal." Petition at 7; see Opinion at 62-63. "And even as to those deeds that do not use the word Episcopal, the deeds were to trustees of 'a local church that was at the time of the conveyance indisputably an Episcopal church.'" *Id.* at 78 (citation omitted).¹² The court below agreed with Judge Stephenson's reasoning in *Buhrman, supra*, 5 Va. Cir. at 503, that a reference in a deed to the Episcopal character of a church indicates "that the designated *cestui que trust* in each deed was a unit or component

¹¹ The court's reference to "that time" is ambiguous, but it was quoting a TEC brief which referred specifically to the period from 1986 to 2006. Given TFC's agreement in 1836 to be "bound ... by every rule and canon which shall be framed, by any Convention acting under [the Diocesan] constitution" (PX-COM-071 at 405 and PX-COM-072 at 20, quoted *supra* at 5), however, the dates of enactment of the canons discussed in the Opinion at 81-83 are arguably relevant in evaluating grantors' intent but irrelevant in holding that TFC is bound by those canons, whenever enacted.

¹² The one exception is a deed given in 1746, before the Revolution led to separation of the Episcopal Church from the Church of England. The Circuit Court found that the 1746 deed was "neutral" on the issue of grantor's intent but agreed with TEC that the property "became subject to the Church's and the Diocese's governing documents, under *Green*, by virtue of the totality of the relationship between the local church and the Church and the Diocese." Opinion at 81 & n.66.

of The Protestant Episcopal Church in the United States of America within the then existing diocese.” Opinion at 79, quoting *Buhrman*. See also Opinion at 80: “These deeds explicitly deed property to trustees on behalf of constituent members of the *Episcopal* denomination. The CANA Congregations are not constituent members of the *Episcopal* denomination.”

TFC argues that “the court read all of TFC’s deeds to condition TFC’s ownership on affiliation with plaintiffs – *i.e.*, as a restrictive covenant or a restraint on alienation.” Petition at 12, citing Opinion at 78. It is mistaken. The court read the deeds as *identifying the grantees* as “trustees of ‘a local church that was at the time of the conveyance indisputably an Episcopal church.’” *Id.* It did not read the deeds as imposing restrictive covenants or restraints on alienation. Pages 12-15 of the Petition attack a straw man.

Miscellaneous neutral principles arguments: TFC argues that the record does not support the Circuit Court’s finding that the Diocese “exercised ‘dominion’ over TFC’s property.” Petition at 15. It is wrong. The general church’s only source of dominion or control over local church properties in *Green* was its “require[ment] that all property transfers be approved by the bishop.” 221 Va. at 556, 272 S.E.2d at 186. The general church has the same requirement here (except with respect to unconsecrated property) – and many others. As the Circuit Court explained,

canons requiring Diocesan consent to encumber or alienate real property or incur debt “give the Diocese ‘right[s] customarily associated with ownership,’ ‘dominion,’ and ‘control,’ i.e., the right to prevent property from being sold or encumbered.” Opinion at 89 n.73, quoting *Green*, 221 Va. at 555, 272 S.E.2d at 186. See also Opinion at 91-92, listing seven ways in which “TEC’s and the Diocese’s Constitution and Canons demonstrate *pervasive* dominion, management, and control over local church property, in a manner normally associated with ownership, title, and possession.”

TFC’s reliance on “traditional concepts of contract law” (Petition at 17, 21; see *id.* at 6, 12) requires little response. *Green* does not parse the contractual interests of the general church in terms of offer, acceptance, consideration, mutuality, conditions precedent or subsequent, or any other traditional aspects of the law of contracts involving parties other than churches. The Circuit Court correctly held that conventional contract law principles do not apply to church property cases. Local churches are units of the hierarchy and take their very identity from association with the larger church. They are not independent entities negotiating a commercial agreement at arm’s length, which is the context in which such traditional contract principles typically arise.

The Canons, the deeds, and the dealings between the parties evince

a contractual and proprietary relationship. TFC's assent to be bound by the laws of the Church is thoroughly documented by the opinion below; it "presumably benefitted [*i.e.*, received consideration] from the association, spiritually and otherwise" (*Green*, 221 Va. at 554, 272 S.E.2d at 185), and the record shows that that it benefitted, both spiritually and temporally (see Opinion at 90-91).¹³ Further, national and Diocesan Canons are *not* enacted "unilateral[ly]" (Petition at 3, 11, 17, 18, 21, 24, 25) but in a representative process in which each local church participates. See PX-COM-003 at 6-7 (Diocesan Constitution, Arts. I, III); PX-COM-001 at 9-10 (TEC Constitution, Art. I); Diocese's Post-Trial Opening Brief at Exhibit A (pages 196-201), showing that TFC has been represented at Diocesan Annual Councils since 1785, including every year since 1876.

TFC argues that "neutral principles of law" are "developed for use in *all* property disputes." Petition at 1, 10 (emphasis added in Petition; internal quotation marks omitted). This Court has explained how neutral principles of Virginia law apply to church property disputes, in *Norfolk* and *Green*. In a brief filed on June 26, 2008, the CANA Congregations explained that "neutral principles of law, developed for use in *all* property disputes" "simply means

¹³ TFC admitted that it "received some spiritual benefits from being part of the denomination" ("10/18/11 Br." at 69), including "spiritual input from denominational bishops" ("8/12/11 Br." at 89).

that the *principle* must be capable of application in all property disputes – *i.e.*, without consideration of doctrinal issues.” *Id.* at 2 (emphases in CANA brief).

We agree.

TFC argues that in *Norfolk* this Court rejected “the view ‘that those who unite themselves with a hierarchical church do so with an implied consent to its government.’” Petition at 10, 29. It ignores the later holding in *Green*, 221 Va. at 555-56, 272 S.E.2d at 186:

It is reasonable to assume that those who constituted the original membership of Lee Chapel, and who established the church in the manner directed by the grantors in the deed, and those members who followed thereafter, united themselves to a hierarchical church, the A.M.E. Zion Church, with the understanding *and implied consent* that they and their church would be governed by and would adhere to the Discipline of the general church. [Emphasis added.]

(There is no inconsistency between *Norfolk* and *Green*. The Court in *Norfolk* did not “reject” the approach that it later adopted in *Green*. It mentioned implied consent only in the context of its rejection of the “implied trust” doctrine of *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871). See *Norfolk*, 214 Va. at 503-04, 201 S.E.2d at 755; Opinion at 25.)

Constitutionality: TFC’s constitutional argument is grounded in its illusions that the Circuit Court based its decision only on church canons and that the decision below “override[s] civil law” (Petition at 3, 24), instead of applying settled law as articulated in *Green*. TFC’s real argument is that

Virginia law as announced in *Green* is unconstitutional. That is wrong. The neutral principles doctrine in Virginia is nearly identical to the Georgia neutral principles doctrine that the Supreme Court approved in *Jones v. Wolf*, 443 U.S. 595. The only distinctions are that *Green* does not mention the local church's charter (Virginia churches could not incorporate when *Green* was decided) and that Georgia courts do not examine the dealings between the parties. Those differences do not render the Virginia rule unconstitutional.¹⁴

II. TFC's Assignment of Error 3 is waived.

Assignment of Error 3 refers to 1904 legislation, "when the legislature first referenced denominational approval of church property transfers." Petition at 4-5. None of the citations provided as preserving that argument, and nothing in the record below, points to that legislation. The asserted error therefore is waived.

In addition, the arguments presented purportedly in support of that Assignment (Petition at 26-28) are almost entirely outside the scope of that Assignment, and therefore those arguments likewise are waived. (To the extent that the argument even mentions the 1904 legislation referenced in

¹⁴ *Larkin v. Grendel's Den, Inc.*, 459 U.S. 116 (1982), cited in Petition at 25, involved a legislative delegation of zoning authority to private, nongovernmental entities. *Id.* at 122, 125. There was no contractual or consensual aspect to that delegation and no issue of property rights. *Larkin* has no application here.

the Assignment, it describes the Circuit Court's reasoning inaccurately.

Compare Petition at 27 *with* Opinion at 55 n.36.)

III. TFC's Assignment of Error 4 is waived.

Nothing in TFC's "9/16/11 Br." at 29-32, or anywhere in the record, argues the distinction between consecrated and unconsecrated real property that is the subject of TFC's Assignment of Error 4. That Assignment therefore is waived.

IV. A church's personal property is governed by the same rules as its real property. (Assignment of Error 5)

TFC states no valid reason why ownership of a church's personal property should not be determined under the same rules as real property, and there is none. *Green* makes no such distinction, and Va. Code § 57-10 confirms that the same rules apply. *Green* requires consideration of "our own statutes," including § 57-10. The court and all parties understood that the decision would control both realty and personalty, and TFC never suggested anything to the contrary until after it had lost on the merits.¹⁵

¹⁵ TFC has not preserved its arguments that the Circuit Court erred by applying § 57-10 *sua sponte* and that the Diocese "waived" § 57-10 by not citing it after the remand. TFC argued below – in its motion for reconsideration, after the decision on the merits – only that "it is questionable" that § 57-10 "applies independently of Va. Code § 57-9" (but does not repeat that argument here) and that § 57-10 does not "override the wishes of donors" who prefer not to contribute to a general church. But it "assum[ed], *arguendo*, that § 57-10 provides an appropriate rule in cases of
(footnote continued)

As to the issue of donative intent, the Circuit Court's finding regarding grantors of real property applies equally to donors to TFC after 2003:

“any reasonable [donor] would have understood that property conveyed to a local Episcopal church at that time could not be removed from the denomination without the larger church's consent, and that the local church to which he or she was conveying property was bound to use, maintain, and control the property in accordance with the Church's and the Diocese's rules and ensure that property it acquired be used for the mission of The Episcopal Church and for no other denomination.”

Opinion at 83 (citation omitted).

TFC and the Attorney General overstate the facts by averring that donations to TFC were made “on the express condition that their gifts *not* be forwarded to plaintiffs.” Petition at 2, 5, 31; *Amicus* Brief at 1-2. The

unrestricted donations to a congregation.” “2/22/12 Br.” at 9. It also noted that only TEC “invoke[d]” § 57-10 and only in its final post-trial brief, *id.* at 9 & n.9, but it did not assign any legal consequence to that fact.

In all events, TFC's statement that the Circuit Court “invoked § 57-10 *sua sponte*” (Petition at 31) in its Opinion (and therefore after the trial and post-trial briefing) is a misstatement designed to leave the impression that TFC was surprised. In fact, all parties relied on § 57-10 in proceedings before the first appeal. TFC itself cited § 57-10 in support of an argument that “title to a church's personal property follows the deeds to its real property,” almost four years before the 2011 trial. CANA Congregations' Memorandum in Support of Demurrers and Pleas in Bar to the Diocese's Complaint (filed June 22, 2007) at 19. And two years before the trial, the Circuit Court held that control of TFC's Endowment Fund “turns on the application of [§] 57-10, rather than [§] 57-9(A), *as both parties recognize and concede.*” Letter Opinion, Oct. 17, 2008, at 4 (emphasis added). But there would be no error even if the Circuit Court had applied § 57-10 *sua sponte*. See, e.g., *Kemp v. Miller*, 166 Va. 661, 680, 186 S.E. 99, 106 (1936) (no error in instruction given by court on its own motion).

donations in question were made to a local church which was a constituent member of the Episcopal Church, and there is *no* evidence that *any* donor imposed such a condition.¹⁶ The evidence shows only that in 2003, “TFC announced a policy whereby those wishing to support plaintiffs needed to do so independently.” Petition at 9; see *id.* at 32 (“TFC announced that donations would go only to outreach approved by the vestry”). That is “undisputed.” *Id.* It shows at most a hope that donations would not benefit the Diocese, but it is not an express condition on those donations.¹⁷

The Attorney General may simply have copied his “express condition” allegation from TFC’s Petition. He elsewhere argues only that TFC “presents a *prima facie* case that the clearly expressed wishes of donors to a charitable institution are being contravened,” *Amicus* Brief at 4; see *also id.* at 12, and he asks the Court to “grant an appeal to determine whether the record makes out such a scenario,” *id.* See *also id.* at 9 (“*If the Court concludes from the record that the donors’ ‘conveyance or transfer’ of*

¹⁶ That is not surprising, as the issue was never raised at trial. Instead, TFC and the Attorney General waited until after the trial was over, and the Circuit Court had made its decision, to raise this issue in the form of a motion for reconsideration which the Circuit Court properly denied.

¹⁷ The Commonwealth, represented by the Attorney General, intervened as a party for the sole purpose of defending the constitutionality of state statutes. Order, Jan. 3, 2011. The Commonwealth did not appeal the judgment below. The Attorney General, but not the Commonwealth, now appears as an *amicus curiae* to argue that a state statute – Code § 57-10 – is unconstitutional as applied below. See *Amicus* Brief at 9-12.

charitable contributions to The Falls Church were conveyed with the specific purpose that they *not* be used to benefit the plaintiffs ...”) (first emphasis added). The Attorney General is asking this Court to assume a fact-finding function that belongs to the Circuit Court.¹⁸

TFC’s members have not been “force[d]” or “compelled” to give (or to do) anything (Petition at 31, 33), and the Attorney General’s “religious freedom” argument is inapposite. TFC’s donors contributed to an Episcopal church, which operated under the supervision of an Episcopal Bishop. See Opinion at 111 (“Whatever may have been the level of discord and disenchantment with TEC and the Diocese, each of the seven churches in 2003, 2004, 2005, and through most of 2006 remained *Episcopal* churches, constituent members of the Diocese and TEC”). The judgment below requires the return of funds from TFC, not its members, to the mission of the Episcopal Church; and at least part of those funds will advance the mission of The Falls Church (Episcopal). See Tr. 1389-97 (discussing genesis and activities of The Falls Church (Episcopal), which reorganized as a continuing Episcopal congregation after the congregation

¹⁸ The Attorney General did not participate in the proceedings below until after the trial court had issued its decision. As a result, the Attorney General does not know the record. That presumably is why he timidly asks this Court to review the record, rather than stating what is in the record. And now is far too late to be talking about making a prima facie case.

of appellant TFC voted to sever its ties with the Diocese and the Church); DX-FALLS-312 (The Falls Church (Episcopal) 2010 Annual Report).

TFC's donors contributed to a church that was "bound by the national and diocesan constitutions and canons." *Truro Church*, 280 Va. at 15, 694 S.E.2d at 559. A Diocesan Canon provides that "whenever any property, real or personal, formerly owned or used *by any congregation of the Episcopal Church in the Diocese of Virginia* ... has ceased to be so occupied or used *by such congregation*, so that the same may be regarded as abandoned property," the Diocese's Executive Board "shall have the authority to declare such property abandoned and ... to take charge and custody thereof." PX-COM-003 at 28 (emphases added). The Executive Board did just that, after TFC ceased to be an Episcopal Church. PX-FALLS-788.¹⁹ As Judge Stephenson stated under the same circumstances in *Buhrman*, 5 Va. Cir. at 507, "it is most doubtful if that determination is subject to review by [a civil] court."

V. The Circuit Court only granted relief that plaintiffs requested. (Assignment of Error 6)

The Church and the Diocese did plead claims for all relief granted. *Cf.*

¹⁹ TFC's statement that "nothing put the donors on notice that plaintiffs could seize their restricted gifts" (Petition at 34) is thus erroneous as a matter of law, not to mention an inaccurate and inflammatory description of the facts.

Jenkins v. Bay House Assocs., 266 Va. 39, 43, 581 S.E.2d 510, 512 (2003) (quoted in Petition at 35). The Diocese’s Complaint asks for an order directing the trustees to convey and transfer legal title to TFC’s real and personal property to the Bishop and for an accounting. The Church’s Complaint similarly requests an injunction requiring all defendants to relinquish control of “the real and personal property held by the parishes” to the Diocesan Bishop.

Pages 34-35 of the Petition quote a statement by TEC’s counsel at a hearing on September 19, 2008. That statement has nothing to do with the issues in this case. Its context was a discussion of property subject to the Congregations’ § 57-9 petitions. The court had previously suspended discovery in this case and ordered that the October 2008 trial would be limited to issues related to the § 57-9 petitions. Order, Sept. 3, 2008.

The Petition also quotes the Diocese’s October 14, 2011, post-trial brief. That brief quoted an Ohio case,²⁰ which did not even discuss the date of the “disaffiliation” – the issue for which TFC quotes the Diocese’s brief. The Circuit Court made a reasoned and reasonable decision that the date of disaffiliation in this case was the date the Diocese filed suit, for “[a]fter this date, no contribution made, no donation made, no dues paid by a congregant, could reasonably have been made with the understanding that

²⁰ *Episcopal Diocese of Ohio v. Anglican Church of the Transfiguration*, No. CV-08-654973 (Ohio Common Pleas, Cuyahoga Co., Sept. 29, 2011).

the money was going to *Episcopal* congregations.” Opinion at 112.

Finally, TFC relies on a statement by the Diocese’s counsel at a discovery hearing on May 30, 2008. “[T]o the extent they have used those assets to pay for the property or to maintain the property, that’s fine” is not a “stipulat[ion]” that TFC was entitled to a \$2.6 million credit, as it argues.²¹ And the Circuit Court reasonably found that the maintenance costs at issue were the approximate equivalent of the property’s rental value. See Opinion at 112 n.85 (responding to maintenance costs argument by “not[ing] the obvious fact that the CANA Congregation[s] had the use of the property since that point in time as well”). Further, TFC requested a maintenance costs award only in its counterclaim. The Circuit Court struck TFC’s evidence in support of the counterclaim. TFC has not assigned error to that ruling here.

VI. The Circuit Court erred by holding that Va. Code § 57-7.1 does not validate trusts for the benefit of a hierarchical church. (Assignment of Cross-Error)²²

The standard of review is de novo, for legal error.

Va. Code § 57-7.1 was enacted to replace former Code § 57-7. This Court had construed § 57-7 as not validating trusts for the benefit of hierarchical churches, for reasons that do not apply to § 57-7.1. Section

²¹ We can find nothing in the record to support the \$2.6 million figure, and TFC cites nothing.

²² The Court granted an assignment of error on this issue in *Truro Church*, but it decided the case on other grounds without reaching this question.

57-7.1 provides, in language too plain to require interpretation, that “[e]very conveyance or transfer of real or personal property ... to or *for the benefit of any church, church diocese, religious congregation or religious society ... shall be valid.*” Emphases added. The Circuit Court held, however, that § 57-7.1 “did not change the policy in Virginia, which is that church property may be held by trustees for the local congregation, not for the general church.” Opinion at 48 (quoting a previous opinion). That was error.

If § 57-7.1 does not validate trusts for the benefit of hierarchical churches, it violates constitutional guarantees of free exercise of religion and unconstitutionally discriminates against such churches by denying them rights granted local churches and secular organizations. See, e.g., Va. Constitution, Art. I, § 16 (“the General Assembly shall not ... confer any peculiar privileges or advantages on any sect or denomination”); McCreary County v. ACLU, 545 U.S. 844, 860 (2005) (“the ‘First Amendment mandates governmental neutrality between religion and religion, and between religion and non-religion”).

CONCLUSION

There is no need for this Court to review the decision below, which simply applied settled law to the facts. If the Court grants review, however, it also should grant the Diocese’s Assignment of Cross-Error.

Respectfully submitted,

The Protestant Episcopal Church
in the Diocese of Virginia

By: George A. Somerville

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Counsel for Appellee

Certificate

I hereby certify that on June 25, 2012:

An electronic version of the foregoing Brief, in Adobe Acrobat Portable Document Format (PDF) format, has been emailed to scvbriefs@courts.state.va.us, and seven printed copies will be delivered to the Clerk for filing; and

Copies of the foregoing Brief were sent by electronic mail and U.S.

First Class Mail to all Counsel for Appellant, named below:

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Counsel for the Attorney General of Virginia, *Amicus Curiae*

I hereby certify that the foregoing Brief complies with Rule 5:26 of the
Supreme Court of Virginia, except as otherwise provided by Rule 5:18.

George A. Somerville

6682337

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FLOYD

THE ABINGDON PRESBYTERY OF)
THE PRESBYTERIAN CHURCH)
(U.S.A.),)

Plaintiff)

v.)

Case No. CL11-141

INDIAN VALLEY PRESBYTERIAN)
CHURCH, a former Presbyterian)
Church in dissolution,)

INDIAN VALLEY BIBLE)
FELLOWSHIP, INC., A Virginia)
nonstock corporation,)

LLOYD FLINCHUM,)

JERRY DUNCAN,)

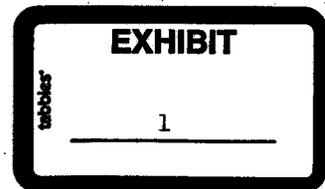
and)

ROBERT HUDDLE,)

Defendants)

FINAL ORDER

This matter is before the Court on the Motion for Summary Judgment filed by the plaintiff, The Abingdon Presbytery of the Presbyterian Church (U.S.A.) ("Abingdon Presbytery"), against the defendants, Indian Valley Presbyterian Church, Indian Valley Bible Fellowship, Inc., Lloyd Flinchum, Jerry Duncan and Robert Huddle concerning property formerly known as (or held by) Indian Valley Presbyterian Church. The Court finds



summary judgment appropriate because this church property dispute involves questions of law and no material fact is genuinely in dispute.

For the reasons stated on March 13, 2012, by the Court from the bench, all of which are incorporated by reference into this Final Order, it is DECLARED, ADJUDGED, ORDERED and DECREED as follows:

- A. Abingdon Presbytery's Motion for Summary Judgment is GRANTED.
- B. Abingdon Presbytery has a contractual and proprietary interest in the real and personal property held, owned, occupied or possessed by Indian Valley or its trustees, including the property described in the Quitclaim Deed attached as Exhibit A to this Final Order ("the Church property").
- C. Defendants have no contractual, proprietary or other right to continue holding, occupying or using the Church property.
- D. The defendant trustees, Lloyd Flinchum, Jerry Duncan and Robert Huddle, hold and, until the real and personal property at issue in this litigation is conveyed to Abingdon Presbytery as required by this Final Order, will continue to hold the Church property subject to the contractual and proprietary interests of the Abingdon Presbytery. Defendants are enjoined to use and convey the Church property strictly in accordance with the deadlines and terms set forth below.
- E. On or before April 30, 2012, defendants shall (1) quitclaim and release all real estate, fixtures, timber, improvements and appurtenances comprising or situated on the Church property by using a quitclaim deed substantially in the form of Exhibit A to this Final Order with all blanks therein appropriately completed; (2) relinquish possession and control

over the Church property to Abingdon Presbytery, including all keys to all doors, sanctuaries, mobile homes, manses, residences and other buildings, entrances or gates situated on the Church property in an orderly fashion. Defendants ^{shall believe} ~~shall represent and warrant to Abingdon Presbytery that to the best of their knowledge, information and belief,~~ the Church property is free and clear of deeds of trust, mechanics' and other monetary liens, leases and parties in possession; and (3) convey, transfer and deliver to Abingdon Presbytery all of their respective right, title and interest in the following personal property owned, held or claimed by defendant Indian Valley Presbyterian Church or the defendant trustees in their official capacities as of June 30, 2011, using a bill of conveyance substantially in the form of the Bill of Conveyance attached as Exhibit B to this Final Order. The personal property conveyed and delivered to Abingdon Presbytery pursuant to this Final Order shall include but not be limited to the following: (1) hymnals; (2) original congregational and sessional minutes, rolls, registers and other records (defendants shall be authorized to make and retain photocopies of these records); (3) insurance policies, leases and rental agreements and other contracts which relate to the Church property; and (4) chairs, tables and other furniture.

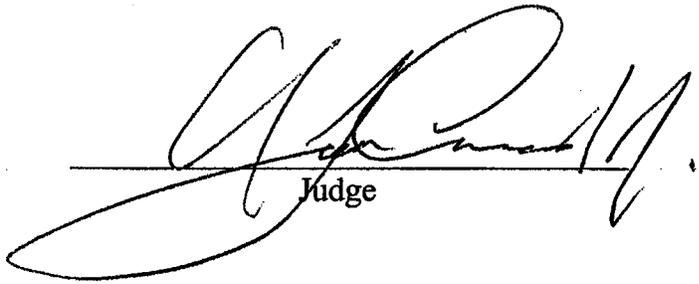
The parties shall cooperate with each other as may reasonably be required from time-to-time to effectuate the provisions of this Final Order.

Each party shall bear its own attorney's fees and costs incurred in this action.

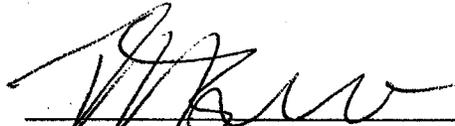
The Clerk is directed to forward attested copies of this Final Order to counsel of record.

This matter is stricken from the Court's docket.

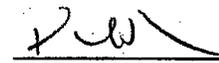
Enter this 30 day of April, 2012.


Judge

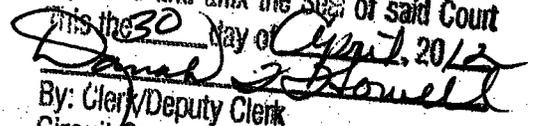
I ask for this:


Paul G. Beers (VSB # 26725)
Glenn, Feldmann, Darby & Goodlatte
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P. O. Box 2887
Roanoke, Virginia 24001-2887
Telephone (540) 224-8035
Facsimile (540) 224-8050
Counsel for The Abingdon Presbytery of the
Presbyterian Church (U.S.A.)

object admission attached
Seen and Agreed


Daniel D. Hamrick, Esq.
Daniel D. Hamrick, P.C.
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Telephone: (540) 382-0131
Facsimile: (540) 382-3017
Counsel for the Defendants



This is to certify that the foregoing is a true copy taken from the records of said Court I, Wendell G. Peters, Clerk thereof, set my hand and affix the Seal of said Court this the 30 day of April, 2012

By: Clerk/Deputy Clerk
Circuit Court, County of Floyd, Virginia

ADDENDUM TO FINAL ORDER

Objection to the Final Order.

(1) The Defendants object to the final order in that property rights are a matter of State law and civil governance; ecclesiastical declarations can not alter property ownership rights if they do not comply with civil laws which define the property right.

(2) The first amendment prohibit civil courts from resolving church property disputes on bases of religious doctrine and practice.

(3) There is no law or constitutional amendment that requires the State to adopt a rule of compulsory deferance to religious authority in resolving church property disputes.

(4) Unilateral declaration of trust violates Virginia civil property law.

(5) An express trust for super congregational churches are invalid under Virginia law, no implied trust for such denominations.

(6) Real estate ownership belongs to congregation pursuant to 1962 deed and legal title to the Indian Valley Church Congregation..

Consideration: n/a
Tax Map No.: 48-43

Prepared by and Return to:
Glenn, Feldmann, Darby & Goodlatte
P. O. Box 2887
Roanoke, Virginia 24001

THIS DEED IS EXEMPT FROM RECORDATION TAX PURSUANT TO
VA. CODE § 58.1-811(A)(2) AND GRANTOR'S TAX PURSUANT TO VA. CODE § 58.1-811(C)(6)

THIS QUITCLAIM DEED, made and entered into this the 16th day of April, 2012, by and between, LLOYD FLINCHUM, JERRY DUNCAN, and ROBERT HUDDLE, TRUSTEES OF INDIAN VALLEY PRESBYTERIAN CHURCH, a former Presbyterian Church in Dissolution, Grantors; and MAVA VASS, SUSANNE MARTIN, GUYDELL SLATE, THOMAS WHARTENBY, LEWIS HOLLAND, and DENNIS HOFFMAN, TRUSTEES OF THE ABINGDON PRESBYTERY OF THE PRESBYTERIAN CHURCH (U.S.A.), whose address is 890 West Spiller Street, P. O. Box 317, Wytheville, Virginia 24382, Grantees.

WITNESSETH

WHEREAS, by deed dated March 5, 1962, and recorded in the Clerk's Office of the Circuit Court for the County of Floyd, Virginia, in Deed Book 85, at page 244, the Trustees of Abingdon Presbytery, Presbyterian Church in the United States, conveyed property therein described and containing approximately 18 5/8 acres to the Trustees of Indian Valley Presbyterian Church. Said 18 5/8 acre parcel less and except a .8 acre parcel conveyed to Richard F. Lorenzen and Marcella J. Lorenzen by deed dated November 6, 1977 and recorded in the aforesaid Clerk's Office in Deed Book 123, at page 581 is hereinafter referred to as the "Church Property"; and

WHEREAS, the Trustees of Indian Valley Presbyterian Church held the Church Property for the use, benefit, and mission of the Presbyterian Church (U.S.A.); and

This deed has been prepared without the benefit of an examination of title.

**EXHIBIT
A**

WHEREAS, as a result of the renunciation of membership in the Presbyterian Church (U.S.A.) by the membership of Indian Valley Presbyterian Church, a dispute arose as to the control and ownership of the Church Property and

WHEREAS, in a case styled The Abingdon Presbytery of the Presbyterian Church (U.S.A.), Plaintiff, v. Indian Valley Presbyterian Church, a former Presbyterian Church in Dissolution, Indian Valley Bible Fellowship, Inc., a Virginia Non-Stock Corporation, Lloyd Flinchum, Jerry Duncan, and Robert Huddle, Defendants, (Case No. CL11-141), the Floyd County Circuit Court, by its Final Order dated April 30, 2012 (the "Final Order"), decreed that Grantors convey all of their right, title and interest in and to the Church Property to The Abingdon Presbytery of the Presbyterian Church (U.S.A.); and

WHEREAS, by prior Orders of the Floyd County Circuit Court including an Order dated July 11, 2011, Lloyd Flinchum, Jerry Duncan, and Robert Huddle were appointed as Trustees of Indian Valley Presbyterian Church; and

WHEREAS, the Final Order directed that Defendants Lloyd Flinchum, Jerry Duncan, and Robert Huddle, as the last-appointed Trustees of the former Presbyterian Church in dissolution convey the hereinafter described property to The Abingdon Presbytery of the Presbyterian Church (U.S.A.); and

WHEREAS, Mava Vass, Susanne Martin, Guydell Slate, Thomas Whartenby, Lewis Holland and Dennis Hoffman, are the duly appointed Trustees of The Abingdon Presbytery of the Presbyterian Church (U.S.A.).

NOW, THEREFORE, pursuant to the Final Order, Grantors do hereby quitclaim, convey and release unto Grantees, all of their right, title and interest in and to all real estate, together with all improvements thereon and appurtenances thereunto belonging, lying and being

anywhere in the Commonwealth of Virginia and owned of record by Grantors in their capacities as Trustees of Indian Valley Presbyterian Church including but not limited to the following lot or parcel of land lying and being in the County of Floyd, Commonwealth of Virginia, and more particularly described as follows:

BEGINNING in center of road No. 619, with apple tree below road; thence new line S. $72^{\circ}\frac{1}{2}$ E. 42 poles to two chestnut oak pointers, S. 15° E. 34 poles to black gum sprouts in old line, with old line N. $67^{\circ}\frac{1}{2}$ ° E. $38\frac{1}{4}$ poles to a stake on west side of Road No. 754; thence with same as it meanders N. 36° W. 20 poles; N. 21° W. 18 poles; N. 4° W. 22 poles; N. 8° W. 6 poles to Arthur Phillips' corner; thence off with his line N. $80\frac{1}{2}^{\circ}$ W. $29\frac{1}{2}$ poles to center of road No. 619; thence with same as it meanders S. $46\frac{1}{2}^{\circ}$ W. 10 poles; S. 38° W. 28 poles; S. 79° W. $9\frac{3}{4}$ poles, crossing branch; S. 26° W. $4\frac{3}{5}$ poles to the BEGINNING, containing 18-5/8 acres. LESS a strip of land along the front of said property given to the State Highway Department, containing 0.53 acre, more or less, being shown on State Highway Department Files, Road 754, Project 1331-11, Sheet 3 of six sheets.

LESS AND EXCEPT, an $\frac{8}{10}^{\text{th}}$ of an acre, more or less, parcel conveyed by the Trustees of the Indian Valley Presbyterian Church to Richard F. Lorenzen and Marcella J. Lorenzen by deed dated November 6, 1977, and recorded in the Clerk's Office of the Circuit Court of Floyd County, Virginia, in Deed Book 123, page 581.

Grantors hereby represent and warrant to Grantees that, to the best of their knowledge, information and belief, the Church Property is free and clear of deeds of trust, mechanics' and other monetary liens, leases and parties in possession.

This conveyance is made subject, however, to all easements, restrictions and covenants of record that affect the property just hereinabove described.

WITNESS the following signatures and seals:

INDIAN VALLEY PRESBYTERIAN CHURCH

By: _____ (SEAL)
Lloyd Flinchum, Trustee

By: _____ (SEAL)
Jerry Duncan, Trustee

By: _____ (SEAL)
Robert Huddle, Trustee

COMMONWEALTH OF VIRGINIA

CITY / COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by Lloyd Flinchum, Trustee of Indian Valley Presbyterian Church, a former Presbyterian Church in Dissolution, on behalf of said Church, Grantor.

Notary Public

Commission Expires: _____

Registration Number: _____

COMMONWEALTH OF VIRGINIA

CITY / COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by Jerry Duncan, Trustee of Indian Valley Presbyterian Church, a former Presbyterian Church in Dissolution, Grantor.

Notary Public

Commission Expires: _____
Registration Number: _____

COMMONWEALTH OF VIRGINIA

CITY / COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by Robert Huddle, Trustee of Indian Valley Presbyterian Church, a former Presbyterian Church in Dissolution, Grantor.

Notary Public

Commission Expires: _____
Registration Number: _____

BILL OF CONVEYANCE

THIS BILL OF SALE made and entered into this the 16th day of April, 2012, by and between LLOYD FLINCHUM, JERRY DUNCAN, and ROBERT HUDDLE, TRUSTEES OF INDIAN VALLEY PRESBYTERIAN CHURCH, a former Presbyterian Church in Dissolution, (herein collectively the "Church Parties"); and MAVA VASS, SUSANNE MARTIN, GUYDELL SLATE, THOMAS WHARTENBY, LEWIS HOLLAND and DENNIS HOFFMAN, TRUSTEES OF THE ABINGDON PRESBYTERY OF THE PRESBYTERIAN CHURCH (U.S.A.).

WITNESSETH

Pursuant to a Final Order entered April 30, 2012, by the Circuit Court for the County of Floyd, Virginia, in the following matter, The Abingdon Presbytery of the Presbyterian Church (USA), Plaintiff, v. Indian Valley Presbyterian Church, a former Presbyterian Church in Dissolution, Indian Valley Bible Fellowship, Inc., a Virginia Non-Stock Corporation, Lloyd Flinchum, Jerry Duncan, and Robert Huddle, Defendants, (Case No. CL11-41) (the "Final Order"), the Circuit Court of Floyd County determined that the Church Parties hold the Transferred Property (as hereinafter defined) for the benefit of The Abingdon Presbytery of The Presbyterian Church (U.S.A.) and ordered the Church Parties to transfer, assign, and convey to The Abingdon Presbytery of the Presbyterian Church (U.S.A.) all of their respective rights, titles, and interests in and to all tangible and intangible personal property owned, claimed or held by Indian Valley Presbyterian Church as of June 30, 2011, including but not limited to (1) hymnals, (2) original congregational and sessional minutes, rolls, registers and other records, (3) insurance policies, leases and rental agreements and other contracts which relate to the Church property, and (4) chairs, pews, tables and other furniture (collectively, the "Transferred Property").

NOW, THEREFORE, to effect the terms of the Final Order, the Church Parties hereby transfer, assign, and convey to The Abingdon Presbytery of the Presbyterian Church (U.S.A.) all of their respective rights, titles, and interests in the Transferred Property and deliver and relinquish possession and control over such Transferred Property to The Abingdon Presbytery of the Presbyterian Church (U.S.A.). The Church Parties agree that they shall timely execute and deliver such further documents or instruments as may be necessary to effect the transfer and conveyance of the Transferred Property.

WITNESS the following signatures and seals:

INDIAN VALLEY PRESBYTERIAN CHURCH

By: _____ (SEAL)
Lloyd Flinchum, Trustee

By: _____ (SEAL)
Jerry Duncan, Trustee

By: _____ (SEAL)
Robert Huddle, Trustee

APPEARANCES:

GLENN, FELDMANN, DARBY & GOODLATTE
ROANOKE, VIRGINIA
BY: PAUL G. BEERS, ESQ.

Counsel on behalf of Plaintiff

DANIEL D. HAMBRICK, ATTORNEY AT LAW
CHRISTIANSBURG, VIRGINIA
BY: DANIEL D. HAMBRICK, ESQ.

Counsel on behalf of Defendants

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1 The following hearing came on to be heard before the
2 Honorable A. Joseph Canada, Judge of the Circuit Court for the
3 County of Floyd, sitting at Floyd, Virginia, at 9:10 a.m. on
4 this, the 13th day of March 2012.

5
6 THE COURT: Good morning.

7 MR. BEERS: Good morning, Your Honor.

8 MR. HAMBRICK: Good morning.

9 THE COURT: This has been a very interesting case
10 for me. I want to compliment both sides for the fine
11 job you all have done in briefing the matter. This is
12 not a real pleasant case for a Judge to have and I
13 certainly understand the congregation of the church
14 and their deep seeded feelings for this particular
15 matter.

16 But I am obligated to follow the law and that is
17 what I am going to do in this case. I have read all
18 the briefs and cases and I have come to certain
19 conclusions based on the motion that is before the
20 Court at this time.

21 This is what I am going to do. It has been
22 agreed that the Presbyterian Church USA is a religious
23 denomination and that it is an hierarchical, I guess
24 that is the way you pronounce it, denomination, such

1 as the Episcopal Church and in all matters of this
2 nature, the mother church I call it, has prevailed
3 over the local churches in every known property
4 dispute in Virginia.

5 The Presbyterian Church USA is governed by the
6 operatives in accordance with the highly detailed
7 constitution comprised of the book of order and
8 others. The parties have stipulated to the
9 authenticity and the admissibility of the book of
10 order.

11 In August of 1987, Indian Valley submitted the
12 covenant signed by several of the defendant trustees,
13 they promise to be bound by the faith mission and
14 order of the Presbyterian Church and in essence
15 acknowledged the hierarchy. The church operates under
16 the guidance of the Presbyterian Church USA ministry.
17 Indian Valley participated in governing structures of
18 the Presbyterian Church USA by sending representatives
19 to meetings of the Abingdon Presbyterian, made
20 assessments and other contributions.

21 The defendants in this case continue to operate
22 under the guidance of the mother church, budgets were
23 improved at the Abingdon Presbyterian, Presbytery.
24 They also asked to deviate from the book of order and

CERTIFICATE OF REPORTER

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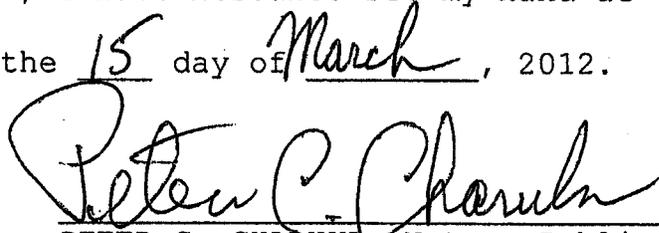
STATE OF VIRGINIA AT LARGE:

I, PETER C. CHARUKA, Notary Public for the Commonwealth of Virginia, at Large, do hereby certify that the excerpt of the Hearing held on March 13, 2012, was by me reduced to machine shorthand in the presence of the parties, afterwards transcribed under my direction by means of a computer, and that to the best of my knowledge the foregoing is a true and correct transcript of the excerpt of the Hearing as aforesaid.

I further certify that the excerpt of this Hearing was taken at the time and place in the foregoing caption certified.

I further certify that I am not a relative, counsel or attorney for either party or otherwise interested in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto set my hand at Roanoke, Virginia, on this the 15 day of March, 2012.


PETER C. CHARUKA, Notary Public

NOTARY REGISTRATION NUMBER 108524
MY COMMISSION EXPIRES July 31, 2013